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Professor Channing  
from his friend & servant  
Peter O. Thatcher.

JUDGE THACHER'S ADDRESS.



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AN

# ADDRESS,

PRONOUNCED

ON THE FIRST TUESDAY OF MARCH, 1831.

BEFORE THE

**Members of the Bar of the County of Suffolk,**

MASSACHUSETTS.

---

BY PETER OXENBRIDGE THACHER,  
COUNSELLOR AT LAW.

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BOSTON:

PUBLISHED BY HILLIARD, GRAY, LITTLE AND WILKINS.

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1831.

At a Meeting of the Bar of Suffolk, held in the Supreme Judicial Court Room, on the 1st Tuesday of March, 1831,

*It was Voted*, That the thanks of the Bar be given to the HON. JUDGE THACHER, for the learned, classical, and interesting Address delivered by him on the present Anniversary, and that he be respectfully requested to permit a copy to be taken for the press.

From the records.

JOSIAH QUINCY, JR.

*Secretary of the Suffolk Bar.*

## ADDRESS.

GENTLEMEN,

The orator upon these occasions is permitted to address you on any subject connected with our profession. The difficulty which he feels is to blend novelty in his discourse, so as to excite your attention, and to reward it. But why is novelty so desirable? It is said, that there is nothing new under the sun. But experience convinces us, that there is a time when old things become new. Indeed the best knowledge consists in the power to recall old truths, and the talent to apply them to the various occasions of life. We accompany the traveller, however, into new and unexplored regions, even among the burning deserts of Africa, with increasing interest, and our curiosity is kept alive by the constant novelty of the scene. While he who visits old countries, abounding in the fruits of civilization, whose manners and institutions are familiar to us, may be well expected to improve himself, but can hardly hope by his relation to interest others. So that while at this time, all subjects are open to my choice, still, I

find myself in the condition of the rich man, who is so oppressed with his wealth, that he cannot enjoy it.

When Horace threw down his shield, and ignobly fled at the battle of Philippi, whither he had been drawn, by his friendship for Brutus, and his passion for liberty ; he honestly confessed, that he was not born to be a soldier, and ever afterwards devoted himself to the service of the Muses. Like the poet, I am resolved, if I should happily escape from my present peril, to devote myself hereafter to the more congenial occupation of dispensing justice with mercy.

But a necessity is imposed upon us ;—the subject must be grave, for that becomes us—and every thing must move in its own time and place. Permit me then, in a discourse, designed more particularly for my young friends, to indulge my taste, and to devote this interview to some consideration of the connexion between the moral and the professional character.

The study of morals belongs to all men, of whatever profession, age, or pursuit. Every man is bound by various relations to other beings, and the knowledge of these relations, and of the manner in which they should be discharged, is the proper business of morals. The acquisition of

some branches of knowledge seems, by common consent, to belong to one period of life in preference to any other. Thus the elements of language are taught, and it would seem, that they must be acquired in youth, if at all: for though there are some splendid exceptions, yet few have the courage, and fewer still the leisure, to learn a foreign language in advanced life. But the science of morals is with parents, the first they begin to teach their children: it is one however which varies its aspects in every successive period of life, and must therefore be the companion of every age, and of all other studies and pursuits. He may well begin to tremble for himself, who is proud of his own perfection. Whenever a man thinks himself perfect in this branch of education, and remits the study, whatever may be his age, his rank, or his occupation, and whether in the pulpit, on the bench, in the hall of legislation, or in the common walks of life, he will too soon betray the neglect. The Muses are jealous mistresses, and will not permit rivals in the affections of their votaries. But this is eminently true of wisdom and morals. These are not to be sacrificed to strength of body, activity of limbs, or grace of manners. The Muses are but the hand-maids of Minerva. While they occupy



Parnassus, and drink at the Pierian spring, she, in virgin pride, dwells in high Olympus, and her food is the ambrosia and nectar of the Gods.

We are told, that “of old it was the custom to send the youth of highest quality to Philosophers to be formed. It was in their schools, in their company, and by their precepts and example, that the illustrious pupils were inured to hardship, and exercised in the severest courses of temperance and self-denial. By such an early discipline, they were fitted for the command of others ; to maintain their country’s honour in war ; rule wisely in the state, and fight against luxury and corruption in times of prosperity and peace.”<sup>a</sup> Philosophy is said to have derived her birth from Socrates ; not the doctrine of physics which was of an earlier date, but that philosophy which treats of men and manners, and of the nature of good and evil : and we may justly apply to it, what was said by the Roman orator, of the genius of Quintius Hortensius, in his early youth, that like one of the statues of Phidias, it was no sooner beheld, than it was admired by all who had the taste to love virtue and to practise it.<sup>b</sup> The philosophers of antiquity, especially those of the school of Socrates, delighted more

a 1 *Shafts.* 104.

b *Cic. Brut.*

in the study of morals than of nature. Their imperfect knowledge of the latter, and their erroneous conceptions of the causes of its phenomena, rendered the pursuit unpleasant and unprofitable. Their knowledge of nature was limited greatly to sensible objects. They were shackled too with systems founded in fancy and imagination, rather than on a patient deduction of truth from actual experiment and mathematical demonstration. It was reserved for the "Prophet of the Arts and the Father of experimental philosophy,"<sup>c</sup> in modern times, to dissolve the long continued illusions of theory, and to introduce a new principle into the study of nature, which is not inapplicable however, even to the study of moral and professional science, to which we are indebted for all the present improvement in the arts and sciences.

However highly the science of morality was esteemed in the schools of the ancients, their notions of obligation, arising from defective systems of religious truth, led them into the greatest errors both in speculation and conduct. Among the Jews, for instance, greater reverence was felt for the ceremonial than for the moral law. It was a favoured maxim of their Rabbis, "that the words of the Scribes are more amiable than

<sup>c</sup> Lord Bacon.

the words of the Prophets, and more weighty ; and the words of the Cabala, *i. e.* the traditions of the Fathers, equal to the words of the Law, and more to be regarded than the words of the Prophets.”<sup>a</sup> An ancient Jewish canon declares, “*that vows take place even in things commanded by the Law, as well as in things indifferent ; and that any one is so bound by them, that he cannot, without great sin, do that which is commanded, so that if he make a vow, which cannot be ratified without breaking a command, the vow must be ratified, and the commandment violated.*”<sup>b</sup> With such perversity of sentiment, their Priests and Elders scrupled to enter the Judgment Hall, on the eve of the passover, *lest they should be defiled by touching the person of a heathen ;*<sup>c</sup> but they scrupled not, at the same moment, to prefer a murderer to the man, whom his judge pronounced to be innocent, and they rejected and crucified the Saviour of the world. No wonder that the sun hid his face, that the earth was covered with darkness, and that even the spirits of the dead were roused from the long sleep of the grave, at the consummation of that memorable scene of moral and national guilt.

a 1 Whitby's Paraphrase on the New Testament, 190 ; he quotes R. Maimonides and Lightfoot.

b Ibid. 279 ; he quotes Dr. Pocock.      c John xviii. 28.

In some of the schools of antiquity, the pupil was urged to the practice of virtue, because it was convenient and fit ; in others, because it was beautiful and good ; and some, rising to a more sublime conception, urged that it was conformable to those ideas, which were framed in the divine mind, and were the rule of his conduct. But none laid the foundation of virtue in the will of God and the moral accountability of man. And therefore what availed those sounds so pleasant to the ear, so expressive, so just, and so full of dignity, when the scholar, having left the walks of the Academy, mingled in the scenes of civil and political life ? He was then but too apt to imitate the vulgar vices of his gods, rather than to recall the beautiful and sublime theories of his master.

The science of morals is conversant with man and conduct. It aims to elevate the personal character ; because eminence in moral qualities necessarily indicates great and successful efforts at personal improvement, and even sheds a divine lustre on the expression of the countenance and character. It identifies itself too with that practical property called common sense, which is the spontaneous consent of mankind in approving the right and condemning the wrong. Its value far exceeds in worth the science of numbers, figures,

or the application of the mechanical powers to inanimate objects. However useful and necessary these are in the conduct of human concerns, and for the convenience and embellishment of life, they are far inferior in importance to moral studies, and in the influence which they have on conduct. For these improve the affections and judgment; and the more we know of ourselves, and of mankind, and the better we have learnt to apply the science of philosophy to the study of duty, the less apt shall we be to be proud of our attainments. But the deepest knowledge of nature and art, and even the most extensive researches into the learned professions, will not elevate the individual in the scale of moral excellence, unless his soul is warmed and softened at the same time by the love of that virtue, which admits of close inspection, and is loved and revered the more nearly it is seen. The scholar may have a profound knowledge in dogmatic and controversial theology; he may extend his researches into all mysteries, and think that he knows all things in heaven, and earth, and under the earth; and yet, if this superior knowledge only makes him disputatious and uncharitable, insensible to his own defects, regardless of the merit of others, and indifferent to their happiness; who will pre-

tend that he is a good man, much more, that he is a good Christian? There have been many highly gifted with talents, and distinguished for wit, learning, and accomplishments, who were yet infamous for their vices. Need I mention the witty George Villiers, Duke of Buckingham, the ostensible author of the 'Rehearsal,' "who lived," says Walter Scott, "an unprincipled statesman, a fickle projector, a wavering friend, a steady enemy; and died a bankrupt, an outcast, and a proverb." Who ever excelled Lord Bolingbroke in extent of knowledge, or in eloquence and talent as a writer? And yet he lived to extreme age, a melancholy spectacle of the fruits of pride, ambition, and infidelity. In his beautiful 'Reflections on Exile,' he seemed to possess all that the schools of ancient philosophy could impart to inspire resignation in adversity. But it was in his head only, and not in his heart; for he had not there that divine philosophy, which alone can sustain the evils of life. He verified the fine remark, which is ascribed by Mr. Locke to his friend, the elder Lord Shaftsbury, "that it is not the want of knowledge, but the perverseness of the will, that fills men's actions with follies, and their lives with disorders." This truth

a Scott's *Life of Dryden*, in I vol. of the *Works of Dryden*, 134.

was realized by Lord Shaftsbury himself, whose ever shifting and selfish policy dishonoured his noble talents, and deprived him of the confidence of all parties; so that he was driven, at last, as a fugitive from his country, and ended his life in exile.\*

The effect of moral study on intellectual talent and character is worthy of consideration. Every man carries in his own breast his worst enemy or his best friend. If, like the Demon of Socrates, this invisible companion is the friend of truth and virtue; the more we converse with him, the better shall we be qualified to converse with mankind, and I may add, "the more agreeable and profitable shall we be in company." Let it be, that this celebrated genius of the philosopher was "nothing more than a sound judgment, im-

a Lord Shaftsbury fled to Holland in 1682, and died there. He was grandfather of the author of "The Characteristics," and was Lord Chancellor in the time of Charles II. 1 Ralph's History of England, p. 710. In Dr. Franklin's Life, written by himself, there is an interesting account of some passages in the early life of Ralph, who was his friend and fellow passenger in his first voyage to England. His History, which includes the period from the Restoration of Charles II. to the death of William III., is in two large folio volumes, and is often quoted with great respect by Mr. Hallam in his "Constitutional History of England from the accession of Henry VII. to the death of George II." The first volume, which closes with the abdication of James II., is much superior in historical merit to the second, partaking less of party feeling and temper; for he was an ardent "lover of Truth as well as of Liberty." It will reward the patient reader. A copy is in the library of Harvard College.

proved by experience, and a careful observation of nature and things ;’’ still, taking such a guide and monitor, the passions will yield themselves the willing auxiliaries of genius and virtue. No man can so well command others, as he who has the entire command of himself. Who can describe goodness so as to excite the love of it in others, like the good man? Who can persuade us to love our country, and respect its constitution and laws, like him whose soul burns with the fire of patriotism? Nothing has so great power over the minds of mankind as truth : for the nearer that even fiction approaches to it, the more it delights us. Hence, to constitute the poet and the orator, the individual must be profoundly acquainted with the human heart, and find in himself the models of that truth and excellence, which his fancy would paint to others. That is the foundation of original genius.

“In darkness, and with dangers compassed round,  
And solitude ;—”

Milton drew from his own soul those descriptions of natural and moral beauty and sublimity, which have immortalized his great Epic. No common thoughts in common language, but there breathe in every page the inspirations of genius, in lines which Apollo delights to hear. What



gives to the works of ancient genius an ever increasing freshness and splendour, which all the enemies of classic learning cannot tarnish, but the stamp of truth and nature which glows in every page? They are placed in the temple of Fame, because they are the legitimate heralds of truth and nature. Nor has eloquence yet become mute. While nations may well contend for the honour of her birth, she acknowledges no country but freedom, no child but genius. Nor did she ever impart her divine inspiration to any one, in whom was not the intense love of truth, of liberty, and of country. Read the productions of DEMOSTHENES, of CICERO, of CHATHAM, and of OUR OWN WEBSTER, and you will find the best proof of the principle which I would illustrate.

On an occasion like the present, you expect from the orator the words of truth and soberness—no fiction, no disguise, but

*Veras voces—ab imo pectore.*

I should therefore ill discharge the office with which I am this day honoured, did I not add to the remarks which I have made on moral culture, that all virtue which is not founded in the highest motive, is imperfect. The greatest security for a course of virtuous, elevated, and consistent

conduct, in all situations, and at all times, arises from an habitual conviction, founded on a sincere and rational belief, of the being, providence, and government of God, of the existence of a future state, and of the certain connexion between present virtue and future happiness.

For my own part, I believe, with the royal critic, "that even if there was no such thing as justice on earth, or an almighty power in heaven, it would still be the true interest of every one to be virtuous and humane. Such dispositions unite mankind in bonds of amity, and are absolutely necessary for their happiness and preservation; whilst vice never fails to plunge its votaries in misery and destruction."<sup>a</sup> But it is not to be expected, that men in general will act from regard to the abstract notions of the beauty of virtue and the fitness of things. They must be restrained by the fear of punishment, and by reverence for the laws, which make the guilty to tremble even amidst their fancied security. The earlier that such sentiments are impressed on the tender and susceptible minds of youth, and the more durable the impression, the more happy will it be for them and for society. In this view, how important are

<sup>a</sup> Essay on Machiavel's Prince, by Frederick the Great, King of Prussia. 2 Machiavel's Works, 267.

our schools for the instruction of youth, and our institutions for diffusing religion and morality. But the improvement of the character is not to be confined to any age. In the eye of an enlarged philosophy, the whole of life is but a course of education, whose high end is to teach the scholar the dignity of virtue, and to breathe into him the love of it; to qualify him for the application of his physical, moral, and intellectual powers, to purposes of utility and beneficence; and to excite in him a noble ambition to fill up the circle of life by a course of virtuous action.

In contemplating Law as a universal principle, which all beings animate and inanimate obey, the mind is filled with the magnitude of the conception. Not only creatures, but the Creator himself acknowledges a rule of conduct. Those spirits who surround his throne, and are swift to do his will, and all inferior orders of rational beings, whether in society or solitude, recognize the will of their Creator as the law of their existence. In the revolution of the heavenly bodies, in the succession of seasons, and indeed throughout the whole course of nature, the footsteps of a divine Lawgiver are no less manifest than among the highest intelligent spirits. So that there is great truth in that well known eulogy of the author of

the Ecclesiastical Polity, and language would fail to express it in more sublime terms :—"Of Law there be no less acknowledged, than that her seat is the bosom of God, her voice the harmony of the world ; all things in heaven and earth do her homage, the very least as feeling her care, and the greatest as not exempted from her power ; both angels and men, and creatures of what condition soever, though each in different sort and manner, yet all with uniform consent, admiring her as the mother of their peace and joy."<sup>a</sup>

I will add, in my own humble language, that the law constitutes the ligament of society, binding the state together, preserving its peace, increasing its harmony, and adding to its happiness :—individuals, families, the farmer, the merchant, the artist, the mechanic, the laborer and his employer, the members of the learned professions, the rich and the poor, the wise and the ignorant, great and small, all feel the power, and yield to the sway of the Law, that great leveller of human arrogance, and equalizer of social right and duty. While it exacts unlimited obedience from all as its right, none deem it slavery. On the contrary, the restraint which it lays on all, secures the liberty of all ; and therefore the love of rational liberty is the best security for the reign of the law.

<sup>a</sup> 1 Hooker's Ecclesiastical Polity, 291.

In the language of Thuanus, whose immortal folios I dare not recommend to you in this age of reviews and pamphlets, "the life, and soul, and judgment, and understanding of the country center in the laws. A state without law, like a body deprived of its animating principle, is defunct and lifeless in its blood and members. Magistrates and judges are but ministers and interpreters of the laws: and in fine, *we are all servants of the laws, that we may be free.*"<sup>a</sup>

We belong, gentlemen, to a profession, whose duty it is to keep with vestal purity, and in a perpetual flame, this divine science. For numbers, we compose no small portion of the state. Go through the cities and villages of our country: what place is so barren, what village so small, in which is not found its lawyer, as well as its pas-

<sup>a</sup> E præfatione Thuani ad Henricum, IV. The great historical work of Thuanus (De Thou) was originally published in Latin. It was soon translated into French, but has never, I believe, appeared in the English language. He possessed a supreme reverence for the truth of history, from which no considerations of fear or interest could induce him to swerve. He was a Roman Catholic, and true to his faith, but withal remarkably free from religious and political bigotry, though he lived at a period, and recorded events, which greatly divided the interests and passions of men on subjects of religion and politics. It was for this, and for the further reason, that he did not disguise the intrigues of the Papal authority, nor spare the vices of her dignified clergy, that his work was placed among the prohibited books by that Church. Hume, Robertson, and other great names are much indebted to the diligence and research which distinguish his *Universal History*. It relates to the affairs of the world from about the year 1540, to 1610; and it deserves to be more read, and better known.

tor ? We mingle with the people in all their concerns, at home and abroad, in public and private, in the field and on the exchange. The influence of the profession is not confined to the administration of justice ; it is felt in all the concerns of life and government. You see lawyers in every legislative assembly, among the first to originate, to counsel, and to effect measures of interest to the state. They are active members of every corporation, whether municipal, literary, commercial or humane. Nothing human is foreign to their pursuits. Holding in their hands the shield of the law, they are the protectors of innocence, the avengers of wrong, the expounders of right. Though generally poor themselves, they number the rich among their clients. The mariner pursues his adventurous course upon the ocean more cheerfully and securely, because he finds among the profession the seaman's friend. Even the miserable criminal arraigned for his crimes, wants not an advocate, who will boldly, and eloquently too, defend his rights, when all the good and just of society seem to be estranged from him. So that, I may add, by their universal knowledge, their professional skill, and their active character, they have a sway over the minds of men, which constitutes moral power in an eminent degree.

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The aggregate weight and influence of our society must depend on the individual characters of its members. No individual of any profession is an object of greater reverence than the lawyer, who, to profound learning and exalted moral qualities, adds that most rare gift of heaven, eloquence. While all, therefore, may well be proud of an alliance to such a profession, each should strive by his personal virtues, to render himself and the society worthy of general confidence. Of all communities, that of bad men is least likely to be permanent: for they carry in their head and members the elements of division and decay. But the alliance of learning and virtue is the strong arm of the state. And therefore, in our professional pursuits, the study of justice is ever to be blended with the love and practice of mercy:—since mercy is the foundation of all charitable dealing, and judgment of all just conduct. And if the members of our profession, so numerous, so diffused, and with such powers of influence, will prove themselves true to virtue and to good government, they will compose a phalanx which no Roman legion could penetrate or divide.

Amidst the divisions which successively agitate the state, on subjects of religion, manners, and government, it is your duty not to be indifferent

spectators, but to share in them, that the conflicting parties may not lose the example of your wisdom and moderation. If every one, in his station, will do his duty faithfully, as a good citizen, things will go on well in the republic. Your pursuits qualify you to investigate truth, and your opinions deliberately formed on any subject, will have great influence upon other classes of the community. You spend days and months in the investigation of controverted titles to real estate, and on disputed cases of small value. And all your powers of body and mind are often brought into intense exertion, to maintain the good cause of your clients. Ought it not sometimes, in the vacation at least, to occur to us, that we have titles of infinitely higher interest to investigate for ourselves ?

The late SAMUEL DEXTER,\* whose powers of investigation were not inferior to any master of reasoning in ancient or modern times, whose noble form so indelibly rests on our memory, whose deep toned voice and powerful eloquence still vibrate within these walls—and none who heard or knew him can ever forget him ;—that great

a The Hon. SAMUEL DEXTER, L. L. D. of Boston, was born in the year 1761, and died on the 4th of May, 1815. A sketch of his life and character, containing a most just and eloquent tribute to his memory, was written by the Hon. Judge Story, of the Supreme Court of the United States, and is contained in the Appendix to 1 Mason's Reports.



lawyer directed his attention, in mature life, to the evidences for Christianity. And I well remember his declaration, that his inquiry had resulted in the belief, that its truth admitted a clear demonstration, and that the religion was divine.

Are lawyers to receive their religious faith upon the credit of their pastors, however learned they are, however pure their example, and however worthy to be trusted as guides to immortality ? Not that I would urge you to enter into the deep mazes of theological controversy ; but that you should not neglect, as scholars and christians, the study of your faith, which, while it tends to refine the taste and strengthen the judgment, will not fail to purify your affections.

I have therefore considered, that the religious dissensions which agitate the age, impose an obligation on intelligent laymen, to look into the foundations, and to satisfy themselves on that celebrated question, *what is truth* ? And I think that no man, who seeks his own, or the happiness of his fellow beings, can innocently be indifferent to the answer.

That we should come to different results on this subject, is not to be imputed so much to its intrinsic difficulty, as to our unequal powers of mind. Sects and parties existed among chris-

tians even in the age of the apostles ; and, where the mind is free, it cannot, and perhaps was not intended to be otherwise. Diversity of sentiment, as of conduct, often arises from the peculiar temperament of the mind and body. Different minds require various aliment to nourish and excite them :—some must be driven by terror ; others drawn by love ; while some, of a more philosophical character, will sternly reject all assent, which is not founded on demonstration : even fancy numbers among her disciples, those sensitive minds, which are addicted to the ecstatic and spiritual emotions. The wise and reflecting see in this diversity the liberal provision of the author of nature, who has filled the moral as well as the natural world with variety, in furnishing motives adapted to the wants of all his children. This diversity in the intellectual operations of men produces a constant activity, which will not suffer the soul to sink into security and sloth. But where the mind is chained down by superstition, and dreads to think with manly freedom, a moral leprosy will gradually creep over the soul, which will soon banish the patient from the healthy part of the congregation. Therefore we find, that vigorous sentiment, brilliant wit, good humour, and even exalted goodness, flow in a perpetual stream in those minds only, in which are kept in con-

stant exercise, by collision, the powers of the intellect and the virtues of the heart.

For during that long period, prior to the reformation by Martin Luther, when the consciences of men were held in vassallage, and all professed *one faith in religion*, not only were learning and religion, but morals too, at the lowest ebb. As for religion, if we may believe the truth of history, scarcely was to be found, even among its pastors and guides, a trace of its primitive character.

In a work of the celebrated, but abused Machiavel, written shortly before the æra of the reformation, he speaks of the state of religion, and of the evils which might be apprehended from the general licentiousness of manners, with the spirit of prophecy. ‘If Christian princes,’ said he, ‘had taken care to maintain their religion in the purity it was delivered by its author, it is certain Christendom would have been much more happy and united than it is at present : but it is the surest sign of its declension, to see that those who live nearest to the Church of Rome, which is the Head of our Religion, have the least devotion : for whoever will examine its first principles, and compare them with the practice of these times, will find it no difficult matter to persuade himself,

that either some dreadful scourge, or perhaps utter destruction, is hanging over our heads.’<sup>a</sup>

While, therefore, in exercising the right of private judgment, we find that we differ even in some points, which by theologians are denominated *fundamentals* ; let us not refuse, for that cause, to walk in each other’s company to another and better world. For that would be, perhaps, to preserve our creed at the expense of our religion. Let us rather follow that sublime example of our common Master, who, when two of his disciples would have called fire from heaven to consume some who would not receive him, rebuked their zeal with the reply, *know ye not what manner of spirit ye are of?*

Many things, I am sensible, belong to us in common with other classes of the community, as men having a common origin and destiny: but there are duties growing out of the professional character, which constitute its peculiar morals. I am aware of the delicacy and difficulty of this topic, and that it would better become one, whose head was covered with grey hairs, and whose learning, talents, and services had placed him on the highest seat of the profession. In noticing it, however, I will avail myself of the simple

<sup>a</sup> 3 Machiavel’s Works, 55.

and somewhat quaint language of one of the ancient sages of the English law ; it being the privilege of the wise and illustrious dead to instruct us from their tombs.

“The duty of advocates to their clients is general and particular. The general consists in three things, secrecy, diligence, and fidelity.

1. For Secresy, advocates are a kind of confessors, and ought to be such, to whom the client may with confidence lay open his evidences, and the naked truth of his case, *sub sigillo*, and he ought not to discover them to his clients prejudice, nor will the law compel him to it.

2. For Diligence, much is required in an advocate in receiving instructions, not only by breviate, but by looking into the books themselves, in perusing deeds, in drawing conveyances and pleas, in studying the points in law, and in giving a constant and careful attendance and endeavour in his clients causes.

3. For Fidelity, it is accounted *vinculum societatis*, the name of unfaithfulness is hateful to all, and more in advocates than others whom the client trusts with his livelihood, without which his life is irksome, and the unfaithfulness or fraud of the one, is the ruin of the other.

For your duty to particular clients, you may

consider, that some are rich, yet with such there must be no endeavour to lengthen causes to continue fees.

Some clients are of mean capacity, you must take the more pains to instruct yourself to understand their business.

Some are of quick capacity and confidence, yet you must not trust to their information.

Some are peaceable, detain them not, but send them home the sooner.

Some are contentious, advise them to reconciliation with their adversary.

Among your neighbours in the country never foment but pacify contentions.

Amongst your clients and all others, endeavour to gain and preserve that estimation and respect, which is due to your degree, and to a just, honest and discreet person."

"The poets feign that when Plutus is sent from Jupiter, he limps and goes slowly; but when he is sent from Pluto, he runs and is swift of foot: the moral is, that goods ill gotten, sent by Pluto, come apace; but goods that are well gotten come in but slowly. Therefore I shall commend the council more than the practice of a great judge of our profession, my Lord Bacon. *Seek not proud riches, but such as thou mayst*

*get justly, use soberly, distribute cheerfully, and leave contentedly."*<sup>a</sup>

From the duty of the advocate, it is natural to ascend to the office of the judge. Perhaps the perfection of the judicial character consists in the exhibition of pure intellect, divested of human sympathy. And yet, who would choose for his judge such a monster of perfection? He is the truly great lawyer, who understands the law and the reason of it, and has the talent to apply it to all the occasions of the profession, whether at the Bar or on the Bench. He is the fortunate Judge, who can so conduct himself on the seat of justice, and clothe his decisions in such language, that both he who wins and he who loses his cause, can unite in paying a deserved tribute to his wisdom and integrity. But while we have before us living examples of professional emi-

<sup>a</sup> Whitelock's Memorials, p. 354. Mr. Whitelock took a distinguished part on the side of the Long Parliament during the Rebellion, and held the office of Lord Keeper during the usurpation of Oliver Cromwell. He was an admirable scholar and lawyer. His work is often quoted with respect by Mr. Hallam, and by other writers upon that most interesting period of English History. From the Restoration of Charles II. to his death, in 1676, Mr. W. lived in retirement, being neglected, though he was never prosecuted for his opposition to Charles I., and to the re-establishment of the Monarchy. He lived long enough to see, that Charles had not derived much benefit from the experience of the misfortunes of his family, and that the English nation had been guilty of a great error, in restoring the King unconditionally, and without providing against the abuse of the royal authority. Copies of his work are in the Library of Harvard College, and in the Boston Athenæum.

nence; and while memory, too faithful, sees before it the shade of that departed excellence, which so lately adorned this seat; we can better feel than describe the qualities which constitute the judicial character. I will not attempt to describe the life, the services, and the virtues of a man who held so large a share in the admiration and affections of our community, and who died at a period so ripe for his own glory, though too soon for the Commonwealth. The exhibitions of his profound learning as a Professor of the Law, of his quick and high powers of conception, and of his singular felicity of judgment, are recorded in our Reports, with the memorials of PARSONS, SEWALL, and those other distinguished men, with whom he was associated upon the Bench during his long judicial life. Happy should I be to add my mite to the well earned treasury of his fame. But the character and services, by which the late Chief Justice PARKER will ever be identified with the legal history of this state, have been delineated by some of the most eminent of our citizens, and particularly by one, who knew him well as a Man, a Christian, and a Judge, and by another, on whom his judicial mantle has fallen, and who so well becomes it.\* From this grateful heart,

\* The Hon. ISAAC PARKER, L. L. D. Chief Justice of the Commonwealth of Massachusetts, was born in Boston, June 17, 1768, and died on the 25th July, 1830. For sketches of the life and



the image of his mind and virtues will never be effaced. It will live *there*, while the blood shall flow to the fountain, and in more durable form and colours, than the skill of the painter or statuary could effect with their utmost art.

While lingering by the grave of one, who died in the ripeness and maturity of wisdom and years, there arise before our eyes more youthful forms of mortality. Indeed, death reigns with reckless despotism, and his kingdom is aptly described by the sacred poet, as a land *without any order*.

We recall with painful interest the cherished images of early promise and premature decay, which we have witnessed, at no distant period, within our own circle. Those seats are vacant, which were once filled by the learned, the pious, and the indefatigable GALLISON ;<sup>a</sup> by the accomplished

character of this eminent sage of the law, see the Funeral Sermon, preached on the Sunday after his decease, at the Church in Brattle Square, from Exodus xviii. 21, 22, by the Rev. John G. Palfrey : (printed by Nathan Hale and Gray & Bowen.) Also the Address of the Hon. Lemuel Shaw, the present Chief Justice, before the Bar of Berkshire, September, 1830, which is published in the American Jurist, No. IX. John Lowell, Esq. who was a class mate of the Chief Justice in Harvard College, and the Hon. Judge Story, also wrote sketches of his character. These are not less distinguished for truth of delineation, than for the glowing feeling which they express for the loss of a personal friend and a public ornament. To be praised by such men, is not only the highest praise, but great good fortune.

a JOHN GALLISON, Esq. was born at Marblehead, October 24, 1788. He was educated at Harvard College, which he entered at

**SPOONER,\*** who added to professional science and the charms of eloquence, the ornaments of litera-

the Commencement, 1803. He commenced his professional studies with the Hon. Joseph Story, and completed them with the Hon. John Q. Adams. He was admitted to the Bar of the Court of Common Pleas in 1810, and shortly after commenced practice in the County of Suffolk. He died December 24, 1820, after a short illness.

Judge Story, in his Address to the Bar of Suffolk, in September, 1821, has, in a short passage, delineated the character and high professional and moral worth of his "lamented friend and pupil." A beautiful tribute to his memory, written by the Hon. William Sullivan, is placed on the Records of the Suffolk Bar.

a **WILLIAM JONES SPOONER**, eldest son of the Hon. William Spooner, M. D. was born in Boston, April 15, 1794, and died Oct. 17, 1824. He was matriculated at Harvard University in 1809, and received his first degree in 1813. He passed two years, with singular diligence, at the Law School in Litchfield, Con. and finished his preparations for practice, in the office of the writer of this note, in Boston. He was admitted to practice, as an attorney of the Court of Common Pleas, in 1816, and to the degree of a counsellor of the Supreme Judicial Court, in 1821.

The Bar of Suffolk were deeply affected with his loss, and placed upon their records a notice of their regret, from which I extract the following just delineation of the effect of morals on the professional character.

"They who were accustomed to confide in the professional skill and integrity of Mr. Spooner, are among the sincere mourners of his loss. They went to him as a counsellor, but found in him a friend; and learned to love his virtue, not less than to respect his wisdom."

He never ceased to cultivate his taste for literature, as his contributions to the periodical works of his time evinced. His Review of Godwin's Answer to Malthus on Population, in the 37th No. of the North American Review, is one of the most elaborate and well written articles in that work.

To him may be applied, with a slight alteration, the observation which the Earl of Clarendon makes upon the death of his friend, the Lord Viscount Falkland. "Thus died this incomparable young man, in the thirty-first year of his age, having so much despatched the business of life, that the oldest rarely attain to his knowledge, and the youngest enter not into the world with more innocence: who ever leads such a life, need not care upon how short warning it be taken from him."—Clarendon's Hist. of the Rebellion, vol. III. p. 1530.

ture; and by the respected and lamented OTIS<sup>a</sup> and BLISS.<sup>b</sup>

I would not open wounds which time, and religion, and philosophy have united to heal; but can I at this time forget the modest, the studious, and the amiable JAMES SULLIVAN,<sup>c</sup> who grew up before my eyes, and faded like a summer's flower. In rapid succession followed the

<sup>a</sup> HARRISON GRAY OTIS, JR. of Boston, Counsellor at Law, eldest son of the present Mayor of this city, was admitted to the Court of Common Pleas, as an attorney, in November, 1814, and died, suddenly, January 6, 1827. In the notice which the Bar of Suffolk took of his decease, they say, "the name he bore with manliness and honour, will always be precious to the professors of the Law."

Mr. Otis published, in 1823, "A Letter to the Hon. JOSIAH QUINCY, Judge of the Municipal Court, in the city of Boston, on the Law of Libel, as laid down by him in the case of *Commonwealth vs. Buckingham*. By a Member of Suffolk Bar." This pamphlet did credit to the learning and talents of the author.

A reply to this letter, written with learning and ingenuity, by EDMUND KIMBALL, Esq. Counsellor at Law, of Boston, was published soon afterwards, in the same year, with the title, "Reflections upon the Law of Libel, in a Letter addressed to 'A Member of the Suffolk Bar.' By a Citizen." The law, as adopted by Judge Quincy in that trial, has since been incorporated into our code, by the act of 1826, chap. 107, which permits the truth to be given in evidence in every prosecution for Libel, not allowing it, however, to be a justification, unless published with good motives and for justifiable ends.

<sup>b</sup> ALEXANDER BLISS, of Boston, Counsellor at Law, was born at Springfield, in 1792. He was educated at Yale College, and took his degree there in 1812; and he died at Plymouth, Mass. while on a visit, July 15, 1827. He was admitted as an attorney of the Court of Common Pleas, in July, 1816. During his professional life, he was connected in practice with the Hon. DANIEL WEBSTER.

<sup>c</sup> JAMES SULLIVAN, eldest son of the Hon. WILLIAM SULLIVAN, was born in Boston, July 5, 1803, and died, after a short illness,

youthful LOWELL,\* who inherited the talent, and gave early proof of the learning, which are associated with the name.

In the early extinction of these bright forms of hope, we read the fallacy of human expectation. Slow and laborious is the ascent to eminence in our profession. It is the fruit of long and frequent vigils, and of intense study, combined with

September 6, 1829. He was admitted an attorney of the Court of Common Pleas, July, 1826. A tender constitution impaired and often interrupted the course of Mr. Sullivan's early studies. But he was distinguished for ardour for improvement; and had he been permitted to live, he would have preserved an honourable name, which can never be forgotten in the annals of this Commonwealth.

a Mr. EDWARD JACKSON LOWELL, son of the late Francis C. Lowell, Esq. of Boston, died at Waltham, Mass. in September, 1830, at the age of 26. He was admitted to the Bar of the Court of Common Pleas in Suffolk, October, 1825. He entered the Law School at Harvard University, in the autumn of 1822, in which he pursued his studies, under the care of Professor Stearns, with unremitting attention for two years; and the third year of his course was passed in the office of Judge Jackson and Charles G. Loring, Esq. in Boston. Mr. Kent, late Chancellor of the State of New-York, having opened a School for the instruction of students in Jurisprudence, Mr. Lowell was induced, by the high reputation of that eminent lawyer, to place himself under his tuition, where he remained during his winter course. He returned again to New-York the ensuing winter, to complete the course, which was not finished the preceding one. It is believed, that in each of these different schools, he made such a progress in his legal studies, as to give to all his instructors the highest hopes of his future eminence at the bar. His mind was a very inquisitive and a very sound one. His industry was even beyond his strength. His powers of reasoning were unusually strong. Few young men, at his age, had acquired so great a mass of legal knowledge, and still fewer possessed the power of bringing that knowledge to useful account. But his education was by no means confined to the science of Jurisprudence. He was intimately acquainted with the political history of his own and other countries. He

natural talent for legal pursuits, and a taste to relish them. Fortune and chance too have their influence over the destiny of the ambitious student. But genius is often the tenant of a frail and tender frame, easily deranged, and often is the victim of those very efforts on which it relies for immortality. Perhaps it rarely enters into our system of education, to cultivate and strengthen the physical man, on which the success of the scholar depends, and the importance of which is never more evident, than when he first enters upon the field of manly and professional labour.

Thus those who were formed to adorn our society and profession by talents, learning, and wisdom, have passed away;—and yet another, more recent victim, is added to their number, whom not to mention with honour at this time, would offend equally against professional merit, and the obligations of private friendship.

The father of the late MR. WARNER was a brave soldier of the Revolution, and as an officer, enjoyed the confidence and esteem of General Washington.

was familiar with the modern languages and literature, and he devoted the relaxation of a visit to the most celebrated countries of Europe, for the acquisition of an intimate knowledge of their jurisprudence and civil polity. In short, his mind was a highly cultivated one, and his natural powers were fully adequate to the useful application of his acquirements. In this view, his premature decease may be considered as a public loss, in the estimation of those, who truly estimate the value of a learned and able lawyer, for such he undoubtedly would have been, if his life had been spared.

After that conflict was finished, he served this Commonwealth as a member of the Executive Council, in both branches of the Legislature, and in various civil and military trusts, always with honour to himself, and with advantage to the country.<sup>a</sup> Our departed Brother was his youngest child, and the loss of his father, at a very early period of life, was supplied to him by the judicious tenderness of his venerable mother, who still lives to lament the loss of her proud hopes, and by the paternal care of a highly respected merchant of this city.<sup>b</sup> He received the honours of Harvard College in 1815; and while there, gave full proof of talent, combined with industry; and of ardour for literary acquisition, joined with unqualified devotion to the rules of the university; and he stood in a class, which boasts of some of the best scholars of our age, in the first grade of scholarship.

In the office of a counsellor of this city,<sup>c</sup> he learnt what was to be desired to form an honourable and successful advocate, and he prepared himself by diligent study for the practice of the law, in which so few attain to eminence, and which requires the labour of an iron frame of body united to the highest order of mind. In my reverence for the dead, I would not

<sup>a</sup> JONATHAN WARNER, Esq. of Hardwick, in the County of Worcester. He distinguished himself in the battle of Bennington, 1777. He was Major General of the Seventh division of the Militia of Massachusetts. He died in 1804.

<sup>b</sup> Andrew Brimmer, Esq.

<sup>c</sup> The Hon. Benjamin Gorham.

do injustice to the living, when I say, that few of his coevals excelled him in professional learning, or in the more rare and difficult talent of applying the whole force of a vigorous and cultivated intellect to the investigation of any legal subject which required his attention. Upon a recent occasion, in which the highest talents of the profession were engaged, and which called for their best efforts; you witnessed a triumph, which established his reputation as a Lawyer of the highest promise. His argument drew applause not only from friends who might be partial, but from a generous enemy with whom it was an honour to contend. This highly gifted stranger added to the lustre of his own fame by acknowledging the merit of a rival, and with his own hand entwined around the brow of young and rising genius the laurel of victory.\* But his slender frame could not sustain the efforts of his ardent mind. A worm was silently and rapidly feeding upon his vic-

a WILLIAM AUGUSTUS WARNER, Counsellor at Law, was born at Hardwick, May 25, 1796, and died in Boston, December, 21, 1830. The writer refers to the high terms of applause in which Mr. WIRT, the late Attorney General of the United States, spoke of the opening argument of Mr. Warner, in the case of *Henry Farnum*, Admn. in Equity, vs. *Peter C. Brooks*, before the Supreme Judicial Court of Massachusetts, Suffolk, June, 1829. Benjamin R. Nichols and Benjamin Rand, Esqrs. were associated, in the trial, with Mr. Wirt, for the Plaintiff, and Mr. Warner with Mr. Webster, for the Defendant. Other celebrated counsel were engaged on both sides.—9 Pick. R. 212.

Mr. Warner was admitted to the Court of Common Pleas, as an attorney, in October, 1818, and was, during his professional life, associated in practice with the writer.

tim. But under the disadvantages of decay and disease, whenever he appeared before our judicial tribunals, his learning, his clear conception of legal truth, and his eloquence impressed all who heard him, and none more so, than those to whose minds they were addressed, and who were most able to perceive and to feel their intellectual dignity. Surely I may add, that the removal of such a mind is only to a more exalted sphere, and to nobler pursuits than this earth can boast.

Farewell to thee my friend ! you have risen from the feast, before you were satiated with its enjoyments. You have escaped from those storms, which often cast a deep shadow upon the decline of a long life. I have performed over your honoured ashes the last duty of friendship. It would have been more according to the course of nature, had you performed that task for me. But we shall meet again :—at that dread tribunal, where our frailties, our faults, and our virtues will be weighed in the balance of that charity *which shall never fail*—and where those who have rendered themselves illustrious by patient endurance of evil, and meritorious efforts to excel, will be crowned with immortality.\*

\* It was my intention, in this Address, to introduce only those deceased members of the profession who were personally known to the younger portion of the Bar. The occasion returns but seldom, and is always full of admonition. I did not therefore introduce the name of the Hon. WILLIAM WETMORE, of Boston, who



One of the dangers of our republic, arises from the inducement which it presents to young and ambitious minds, to court popular favour at the expense of conscience and duty. The fate of a nation sometimes depends upon the character of an individual, who by his talents, or by the force of circumstances, is placed in a situation to control and direct its affairs. In addressing a society, among whom I see future lawgivers, orators, and statesmen of my country, no subject appears to me more interesting than

died November 19, 1830, aged 81 years. This venerable gentleman was educated at Harvard University, and was graduated in 1770. He studied law in the office of William Pynchon, Esq. of Salem, and became a distinguished Counsellor in the county of Essex. He afterwards removed to Boston, and received several judicial appointments, having successively held the offices of Judge of Probate, of Associate Justice, and of Chief Justice of the Court of Common Pleas, the latter in the county of Suffolk. A writer who was well acquainted with Judge Wetmore, noticing his death in the *Boston Daily Advertiser* of Nov. 24, 1830, thus describes his character:—"He was an early, active, and consistent Whig, during the revolutionary war, and contributed no small share, by his writings and legislative exertions in that period, to the common cause of public liberty. He belonged to the political school of Washington, and always maintained an undeviating attachment to the Constitution of the United States, as a disciple of that school. He had from his early life a strong devotion to classical learning; and the reading of the best authors of Greece and Rome continued to be, to its very close, his familiar and favourite studies, and soothed and softened the infirmities of his declining years. His mind was vigorous, searching, and exact, various in its resources, and full of acquirements in the best literature. In the domestic circle he was at once an ornament and a guide, with all the tenderness and affection of a devoted parent and husband, the instructive wisdom of a faithful friend. One may say, in the beautiful language of an author often on his lips,

*Omnes eodem cogimur; omnium  
Versatur urna; serius, oculus  
Sors exitura—"*

their moral and professional character. This will determine, whether they are to be the friends or the enemies of our civil and religious institutions;—whether they are to be the slaves of public opinion, changing, as that often does, with the varying interests and fashions of the day, and obedient to every gale of popular excitement; or whether, accustoming themselves to seek truth in its recesses, and to follow it to its results, they will ever be found vigilant sentinels on duty, wise guides, and invincible defenders of the best interests of the state.

The fortunes of our country depend upon the character of its citizens. Events seem to unfold themselves from time to time, which I fear do not augur well for the long duration of the union, which, as it was formed by mutual concessions, must ever be maintained in the same spirit. A dissolution of our union I should consider, as a visitation of the Almighty in his displeasure, for the sins of the nation. If it should be dissolved into its original elements; it requires no prophetic spirit to predict the cause. When we see the struggle for wealth and place, and for local domination, the lover of his country is almost tempted to wish for the Black Broth and Common Tables, which preserved for centuries the Institutions and Liberties of Sparta. Perhaps it is not fortunate for our union, that we are not more bound together by the cords of necessi-

ty:—we were stronger when we were poor, than now that we are rich and prosperous. The avarice and ambition of the leading men, the blind and devoted attachment of their friends, the maddened spirit of party, will make that the prey of every invader, which, if preserved in its original principles, and supported by the virtue of its citizens, would successfully resist a world in arms.

But let this day be consecrated to friendship! Let no bad omen rest upon it! We welcome the train of our younger brothers to engage in the conflict, from which some of us, as Veterans, will soon be entitled to demand an honourable discharge. Your virtues will be wanted, in future time, to moderate the violence of party spirit, to temper the arrogance of success, to reconcile enemies, sometimes to oppose the indiscretion of friends, and sometimes to conflict with the enemies of the state. There is no condition of life, in which virtue has not its appropriate exercise and duty. May you excel us in learning, talents, virtue and success! May your cup be filled with better wine than ours! And may your wealth flow from the prosperity of your country, rather than from its misfortunes!

And now permit me, gentlemen, in relieving your patience, to express my good wishes for you, and for our common profession, in that brief and significant prayer of the Lacedæmonians, "May the Gods grant to you things good and honourable."



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